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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/924,668	08/08/2001	Joseph F. Wenzl	210163	3665

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EXAMINER

REDMAN, JERRY E

ART UNIT	PAPER NUMBER
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3634

DATE MAILED: 10/03/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Applicati n N .

09/924,668

Applicant(s)

WENZL ET AL.

Examiner

Jerry Redman

Art Unit

3634

-- The MAILING DATE of this communication appears n the cover sh et with the c rresp ndence address --

P r i d f r Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 September 2003 .
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) 12-15 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____ .
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 1.5 .
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____ .

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Applicant's election with traverse of Group I (claims 1-11) in Paper No. 5 is acknowledged. The traversal is on the ground(s) that examination of the entire set of claims in the application can be made without a serious or undue burden to the Examiner. This is not found persuasive because the applicant has distinctly claimed three inventions, which if properly searched, would provide a serious burden on the Examiner by searching three different inventions. Furthermore, an applicant can only receive a single patent for a single invention and the applicant has already admitted that three inventions are disclosed but since there is "overlap" because all of the inventions are directed towards the security gate art, there would be no serious burden, is incorrect. More specifically, the preamble of claim 14 fails to even positively recite a gate or security gate, therefore the applicant's own argument holds no merit. Claims 12-15 are hereby withdrawn from consideration as being directed towards a non-elected invention.

The requirement is still deemed proper and is therefore made FINAL.

Claims 1-11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. There is a lack of antecedent basis for the following: In claim 1, line 3, "the receipt"; In claim 3, line 3, "the developed signal"; In claim 4, line 1, "the positioned signal"; In claim 6, line 2, "the relative position"; and In claim 9, line 3, "said gate arm subassembly". In claim 7, line 2, the phraseology "the DC motor to cause of the gate arm" is not readily understood by the Examiner. In claim 11, line 2,

the phraseology "a motor controller object". Does the applicant mean a motor controller, which detects an object?

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-4, 6, and 7 are rejected under 35 U.S.C. 102(e) as being anticipated by Zander. Zander discloses a gate assembly having an elongated arm (32 or 34), a dc motor (80), a linkage mechanism (72), and an electrical control circuit (Figure 7) providing first and second pulses to the motor in response to operating conditions.


Claims 5, and 8-11 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. U.S. patent to Nelson discloses a control device, which generates pulses with a DC motor similar to that of the applicant's invention. U.S. patent to Long et al. disclose linkage mechanisms similar to that of the applicant's invention. U.S. patent to Baump et al. disclose a linkage mechanism similar to that of the applicant's invention.

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Any inquiry concerning this communication should be directed to Jerry Redman
at telephone number 703-308-2120.



Jerry Redman
Primary Examiner